

**REMARKS**

Claims 1-39 are pending and at issue. Claims 11, 29 and 35 are amended hereby to correct the typographical errors noted by the Examiner in the office action or noticed by the applicants. Applicants submit that these amendments do not add any new matter, are not made for patentability purposes and do not narrow the claims as originally presented. However, applicants appreciate the Examiner's careful reading of the claims and his pointing out of these errors.

Applicants respectfully traverse the rejection of claim 1 as indefinite for using the phrase "storing a portion." Applicants submit that this phrase is clear to those of ordinary skill in the art, nor has the Examiner explained why the normal meaning of this phrase is believed to be indefinite. Webster's dictionary defines a "portion" to be a part or a share of something. Accordingly, storing a portion of the received process control information in the primary data historian means that at least a part of the received process control information is stored in the primary data historian. Applicants assert that this phrase is definite and, consequently, the objection should be withdrawn.

Applicants respectfully traverse the rejection of claims 1-10, 14-18, 20-23, 35 and 38-39 as anticipated by Agrusa et al. (U.S. Publication No. 2004/0024891), the rejection of claims 11-13 and 36-37 as obvious over Agrusa et al. in view of Keeler et al. (U.S. Patent 5,386,373), and the rejection of claim 19 as obvious over Agrusa et al. in view of Funkhouser (U.S. Patent 5,784,570). Reconsideration and withdrawal of these rejections is respectfully requested.

Each of claims 1-23 and 35-39 recites a data processing system for use with a process control system having a data historian communicatively coupled to a server, wherein the server is adapted to receive process control data from one or more process plants via an open

network, to use a data processing application to analyze the process control data and generate analysis results and to send the analysis results to a first and a second plant or to a remote user interface via the open network. None of Agrusa et al., Keeler et al or Funkhouser discloses using a data processing application for multiple process plants or of communicating data or analysis results between a data processing application and a multiplicity of process plants or a remote user interface via an open network. As a result, Agrusa et al. cannot anticipate any of claims 1-10, 14-18, 20-23, 35 and no combination of Agrusa et al. with Keeler et al. and Funkhouser can render any of claims 11-13, 19, or 36-37 obvious.

While Agrusa et al. discloses a computer that interconnects two computers systems which operate using different communication protocols, Agrusa et al. does not disclose a data historian that receives and stores process control information from multiple process plants, one that communicates with multiple process plants using an open network or one that communicates between a process plant and a remote user interface using an open network. The Agrusa et al. system simply provides a communication bridge between two or more computers within the same process plant that operate using different communication protocols. Thus, while the Agrusa et al. system includes a communication device that converts communication signals from one communication protocol to another communication protocol, this protocol conversion device is not a data processing application that processes data received from multiple data sources, nor does it produce any analysis results. Instead, this device simply converts signals from one protocol to another protocol without processing any data or analyzing any data within the signals.

Even if the Agrusa et al. protocol converter could be considered to be a data processing application, Agrusa et al. does not disclose (1) that the data is sent to the converter device from different process plants, or (2) that the data is sent to the converter device over

an open network, e.g., one available to the public, or (3) that the converted signal is sent from the converter device to the first or second communication network or to a remote user interface over an open network. The Agrusa et al. disclosure is clearly limited to use within a single process plant or process environment having different sections that use different communication protocols. Nowhere does Agrusa et al. disclose or suggest that the different computers that use the different protocols can or should be placed in different, geographically separated, plants. Still further, Agrusa et al. does not disclose that the communication connections from the first and second communication networks (i.e., the networks that use the first and second protocols) can or should be provided over an open network. In fact, the connection between the first and second communication networks and the converter device is a direct connection, internal to the converter device (and therefore not an open network). Likewise, Agrusa et al. does not disclose or suggest that either the first or the second network should be an open network, nor would one of ordinary skill in the art consider these networks to be open networks, as the first and second networks of Agrusa et al. are clearly networks used to communicate process information within a process plant and therefore would not be open networks for security reasons.

The systems recited by claims 1-23 and 35-39, on the other hand, are systems which send data from one or more different process plants over an open network (which is generally external to the plant) to a data processing application or server that operates on (processes) the data from the plant(s) to, for example, generate reports, detect problems within the plants, etc. The results of the analysis are then sent back to the plants or to a remote user interface over the open network. The claimed system and method are useful in enabling multiple different plants to have access to the data processing capabilities of the data processing application without having to purchase that application and without even having to have the

data processing application be executed within the plant environment. Instead, the various different plants can separately send the data needed by the data processing application over an available open network, such as the Internet, and can receive the results of the data processing application over the same open network, thereby eliminating the need to purchase the data processing application and even to need to purchase or dedicate computer hardware within the process plant for executing the data processing application.

Simply put, Agrusa et al. is not concerned with or directed to a manner of sharing data processing resources between various plants or user interfaces or over an open network. Instead, Agrusa et al. is merely concerned with enabling signals generated in one communication protocol to be sent over a communication network that uses a second communication protocol. In any event, Agrusa et al. does not use or disclose a data processing application that processes data from both of its communication networks, and does not disclose that its various communication networks can or should be in different process plants. Still further, Agrusa et al. does not disclose or suggest that the two communication networks disclosed therein can or should communicate with one another or with any other device (such as a device having a data processing application) via an open network. At best, Agrusa et. al is silent on whether the networks used therein are open or closed networks. However, it is clear from the context of Agrusa et al. that the networks used therein are associated with and internal to a process plant, and therefore would by nature be closed networks. In any event, Agrusa et al. does not provide any positive disclosure or suggestion that the communication networks used therein can or should be open networks. As such, Agrusa et al. fails to disclose or suggest each of the elements of claims 1-23 and 35-39.

Applicants respectfully disagree with the Examiner's contention that Agrusa et al. discloses the elements of independent claims 1 and 35 at paragraph 44 thereof. In fact, paragraph 44 merely discloses an exchange of data between a first computer communicating with a first set of process control equipment and a second computer communicating with a second set of process control equipment. This paragraph does not state that the data exchange should occur over an open network or that a data processing application should receive and use the data from the first and second networks. Still further, this paragraph does not disclose or suggest that the first and second sets of process control equipment should or could be parts of separate or different process plants or remote user interfaces. For these reasons, Agrusa et al. cannot anticipate any of claims 1-10, 14-18, 20-23, 35 or 38-39.

Still further, each of Keeler et al. and Funkhouser fails to provide the missing disclosure of Agrusa et al., nor has the Examiner cited them for this purpose. In fact, while Keeler et al. generally discloses an emissions monitoring system, both Keeler et al. and Funkhouser fail to disclose or suggest sending data from one or more process plants over an open network to be used by a data processing application.

It is clear that the prior art must make a suggestion of or provide an incentive for a claimed combination of elements to establish a *prima facie* case of obviousness. *See, In re Oetiker*, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985). This principle holds true even if the applied art could be modified to produce the invention recited by the pending claims. *See, In re Mills*, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990); *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984) ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") Because each of Agrusa et al., Keeler et al. and Funkhouser fails to disclose or provide any motivation for providing

data from one or more different process plants, over an open network, to a data processing application or to a remote user interface, it follows that no combination of these documents can render any of claims 1-23 or 35-39 obvious.

Moreover, applicants respectfully traverse the rejection of each of dependent claims 11, 12, 36 and 37 as obvious over Agrusa et al. in view of Keeler et al. for the additional reason that each of these claims recites one or more additional elements (besides those discussed above) which are not present in either Agrusa et al. or Keeler et al. In particular, claim 11 recites a data processing application that generates a plant emissions report using a format defined by a governmental agency and that communicates the plant emissions report to the governmental authority. Neither Agrusa et al. nor Keeler et al. discloses a data processing application that generates a plant emissions report using a format defined by a governmental agency or one that communicates the plant emissions report to the governmental authority. The Examiner has not maintained that Agrusa et al. discloses an emissions report, nor does it. While Keeler et al. discloses a plant emissions monitoring system, Keeler et al. does not disclose preparing or sending an emissions report, nor has the Examiner pointed to such specific disclosure in Keeler et al.

Likewise, claim 12 recites a data processing application that performs one of a plant emissions minimization and a plant emissions optimization using one of a shared vector gradient technique, a neural net technique, and a Fibonacci search technique. As acknowledged by the Examiner, Agrusa et al. does not disclose any of the recited minimization or optimization techniques. While Keeler et al. discloses a neural network applied to a sensor system, Keeler et al. does not disclose a data processing application that performs plant emissions minimization or optimization based on this neural network. Instead, Keeler et al. merely discloses using the neural network to train and optimize a virtual

sensor associated with a plant emissions system. Optimizing a sensor is different than performing plant emissions minimization or optimization, as optimizing a sensor entails calibrating a sensor to a particular threshold, while optimizing emission may require changing plant variables to effect the emissions output of the plant.

Moreover, each of claims 36 and 37 recites a remote user interface that is associated with a regulatory authority. Neither Agrusa et al. nor Keeler et al. discloses a remote user interface associated with a regulatory authority. As acknowledged by the examiner, Agrusa et al. does not disclose a remote user interface in any manner. While Keeler et al. discloses an emissions monitoring system, Keeler et al. does not disclose the use of a remote user interface associated with a regulatory agency. Moreover, the primary concern of Keeler et al. is to provide an alarm based on whether certain monitored emissions parameters are off target. Thus, while Keeler et al. discusses that emissions monitoring is important to comply with an environmental agency, Keeler provides no disclosure or suggestion of using a remote user interface associated with a regulatory agency to provide such monitoring by the government agency.

Because neither Agrusa et al. nor Keeler et al. discloses these additional elements of claims 11, 12, 36 and 37, no combination of Agrusa et al. and Keeler et al. can render any of these claims obvious.

Applicants respectfully traverse the rejection of claims 24-27 and 30-34 as anticipated by Eryurek et al. (U.S. Patent No. 6,795,798) and respectfully traverse the rejection of claims 28 and 29 as obvious over Eryurek et al. in view of Keeler et al. Reconsideration and withdrawal of these rejections is respectfully requested.

Each of claims 24-34 recites a method of acquiring, analyzing and reporting process plant data including billing each of a plurality of business entities based on one of a

respective data usage, type, and process time. Eryurek et al. does not specifically disclose a billing function, much less a billing function based on data usage or type or processing time. While, as noted by the Examiner, Eryurek et al. discloses using an electronic contract to establish a relationship between two entities, Eryurek et al. does not specifically disclose any billing parameters associated with this contract, much less that billing of a plurality of business entities is based on one of a respective data usage or type or process time. For this reason, Eryurek et al. cannot anticipate any of claims 24-27 or 30-34.

Additionally, because Keeler et al. fails to disclose these billing procedures (nor has the Examiner cited Keeler et al. for such disclosure), no combination of Eryurek et al. and Keeler et al. can render either of claims 28 or 29 obvious.

Applicants also respectfully traverse the rejection of claims 28 and 29 under 35 U.S.C. § 103(a) as obvious over Eryurek et al. in view of Keeler et al., as this rejection is improper under U.S.C. § 103(c)(1). Applicants note that Eryurek et al. only qualifies as prior art under 35 U.S.C. § 102(e), as properly recognized by the Examiner. 35 U.S.C. § 103(c)(1) states that “[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” While Fisher-Rosemount Systems, Inc., is the direct assignee of the Eryurek et al. patent and Rosemount Analytical, Inc. is the direct assignee of the present application (as recorded in the United States Patent and Trademark Office at Frame 0788, Reel 012643), these two companies are both wholly owned subsidiaries of Emerson Electric Co. and were so at the time of the filing of the present application. As a result the present invention and Eryurek et al. were commonly owned (or



subject to obligation of assignment to the same entity) at the time that the present invention was made. Therefore, under 35 U.S.C. 103(c)(1), Eryurek et al. cannot be used as a § 103 prior art reference with respect to the present application. It follows therefore, that the rejection of claims 28 and 29 under § 103(a) is improper and must be withdrawn for this additional reason.


**CONCLUSION**

For the foregoing reasons, applicants respectfully request reconsideration and withdrawal of the rejections and allowance of claims 1-39. If there are matters that can be discussed by telephone to further the prosecution of this application, applicants respectfully request that the Examiner call its attorney at the number listed below.

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Respectfully submitted,

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